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7 Attorneys for SUN MICROSYSTEMS, INC.,  
8 MORGAN, LEWIS & BOCKIUS LLP, AND MAKING  
9 A SPECIAL APPEARANCE FOR JEFFREY  
10 KINGSTON, WHO HAS NOT BEEN SERVED AND IS  
11 NOT WAIVING SERVICE

12 UNITED STATES DISTRICT COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16 SAN JOSE DIVISION  
17

18 In re Application of Microsoft Corp.

19 Case No. 06-80038 JF (PVT)

20 **DECLARATION OF JAMES N. PENROD**  
21 **IN SUPPORT OF MOTION TO QUASH**  
22 **APPLICANT'S SUBPOENA DUCES**  
23 **TECUM FOR PERSONAL APPEARANCE**  
24 **AND PRODUCTION OF DOCUMENTS**  
25 **AND THINGS**

26 Date: To Be Set  
27 Time: To Be Set  
28 Before: Magistrate Patricia V. Trumbull  
Place: To Be Set

Complaint Filed: N/A  
Trial Date: N/A

29 1-SF/7350924.1

DECLARATION OF JAMES N. PENROD IN SUPPORT OF SUN'S MOTION TO QUASH APPLICANT'S SUBPOENA DUCES TECUM FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

Case No. 06-80038 JF (PVT)

1 I, James N. Penrod, declare as follows:

2 1. I am an attorney licensed to practice law in California and New York and am  
3 admitted before this Court. I am a partner with Morgan, Lewis & Bockius LLP ("Morgan  
4 Lewis").

5 2. Attached as Exhibit A to this Declaration is a true and correct copy of a Letter and  
6 Annex to Letter from the European Commission dated March 10, 2006 addressing issues related  
7 to this Application for discovery.

8 3. Attached as Exhibit B to this Declaration is a true and correct copy of the Supreme  
9 Court's decision in *Intel Corp. v. Advanced Micro Devices*.

10 4. Attached as Exhibit C to this Declaration is a true and correct copy of the  
11 Subpoena and Order served on Morgan Lewis on March 7, 2006.

12 5. Attached as Exhibit D to this Declaration is a true and correct copy of the  
13 Subpoena and Order served on Sun Microsystems, Inc. ("Sun") on March 8, 2006.

14 6. Attached as Exhibit E to this Declaration is a true and correct copy of the Order  
15 Denying in Full AMD's Amended Application Pursuant to 28 USC Section 1782(a) on remand of  
16 the *Intel* case to the lower Court.

17 7. Attached as Exhibit F to this Declaration is a true and correct copy of a press  
18 release posted on the website of the European Commission:  
19 ([http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/298&format=HTML&aged=](http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/298&format=HTML&aged=0&language=EN&guiLanguage=en)  
20 [0&language=EN&guiLanguage=en](http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/298&format=HTML&aged=0&language=EN&guiLanguage=en)).

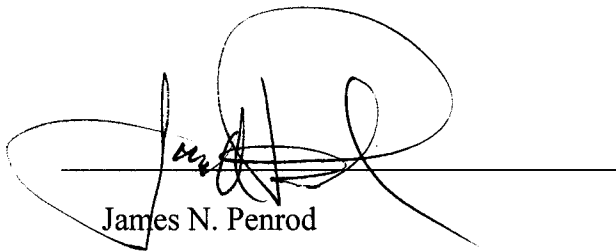
21 8. Attached as Exhibit G to this Declaration is a true and correct copy of Judge  
22 Richard Conway Casey's Order denying Petitioner's application for judicial assistance under 28  
23 U.S.C. Section 1782 in *Application of Dieter Winkler*, U. S. District Court of the Southern  
24 District of New York.

25 9. I am making a special appearance for Jeffrey S. Kingston for purposes of objecting  
26 to the Subpoena and the Motion to Quash. Mr. Kingston has not been served and is not waiving  
27 the requirement of personal service.

1           10. I discussed the dates of service with Microsoft's Washington D.C. counsel and  
2 counsel for Oracle, Clifford Chance and Ronald Alepin and we jointly stipulated that all  
3 subpoenaed parties would have until Monday, March 13, 2006 to file objections to the Subpoena  
4 and until Wednesday, March 15, 2006 to file a Motion to Quash the Subpoena. We also agreed to  
5 electronically serve in PDF format the Objections and Motion to Quash by 4:00 PM Pacific Time  
6 on both of those days. Subsequently, counsel for Microsoft, via email, have waived the  
7 requirement of this Court's order that we serve these pleadings by fax and overnight courier.

8           I declare under penalty of perjury under the laws of the State of California, that foregoing  
9 is true and correct, and if called as a witness, I could competently testify thereto. This declaration  
10 was executed on March 14, 2006 in San Francisco, California.

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James N. Penrod